Appeal, and finally the House of Lords. In like words KENNEDY, J., put it to the jury in *Allen* v. *Flood*, reported below *sub nom. Flood* v. *Jackson* (1895) 2 Q. B. 21, and so did DARLING, J., in *Huttly* v. *Simmonds* (1898) 1 Q. B. 181.

Clearly, if the purpose be merely sentimental, as an aversion to handle products made by "child labor," *Hopkins* v. *Oxley Stave Co.* (1897) 83 Fed., 912; or to force all laborers to join the union, *Plant* v. *Wood* (1900) 176 Mass., 492, or where the combination is of traders, to force all traders into it, *Jackson* v. *Stanfield* (1893) 137 Ind., 592, or to force one into dealing exclusively with the defendants, *Barr* v. *Essex Council* (1894) 53 N. J., Eq. 101; *Quinn* v. *Leathem, supra,* the defendants have nothing to withstand plaintiff's recovery.

A novel application of the doctrine of justifiable motive was made in *Nat. Pro. Assn.* v. *Cumming* (1902) 170 N. Y. 315, commented on 2 COLUMBIA LAW REVIEW 400, where a strike because of the employment of non-union men was justified by PARKER, C. J., on the ground that as the fellow-servant rule in torts prevents recovery against the master for the negligence of a fellow-employee, and the union in question maintained a certain standard of proficiency in the particular line of work, its members could rightfully insist that their fellow-servant conform to those standards. Even if this be sound as applied to skilled labor, it is obvious that the rule of *Curran* v. *Galen* (1897) 152 N. Y. 33 should apply to cases of unskilled labor.

COVENANT RUNNING WITH WATER RIGHTS.—In the recent case of *Jordan* v. *Indianapolis Water Co.* (Ind. 1902) 64 N. E. 680, it was held that the burden of a covenant to pay money ran with a lease of water privileges for a term of years. There was a provision in the lease that it should not be assigned without the consent of the lessor. This would seem to indicate that the right granted was personal, or in gross, rather than appurtenant to the lessee's land. The right to take water is generally treated as an easement and not as a profit *a prendre*, *Race* v. *Ward* (1855) 4 E. & B. 702. In England an easement in gross is held to be a mere license and not a property right, *Rangely* v. *Midland Ry.* (1868) L. R. 3 Ch. 310. In this country while it is spoken of as a property right, it is held to be so far personal as to be neither inheritable nor assignable, *Moore* v. *Cross* (1873) 43 Ind. 30; *L. & N. R. Co.* v. *Koelle* (1882) 104 Ill. 455. Some of the States, however, while still using the term "easement" treat the right to take water as a profit which is inheritable and assignable; *Goodrich* v. *Burbank* (1866) 12 Allen 459; *Poull* v. *Mockley* (1873) 33 Wis. 482. This is the more reasonable view under modern conditions of society. Treating the right here in question as a profit, it would be possible to assign it and to create an estate in it, *Davis* v. *Morgan* (1825) 4 B. & C. 8.

The covenant in question was to pay a fixed sum as "rent" for the water privilege granted. The lessee with the consent of the lessor assigned the lease to the defendant and the present action was to recover certain instalments of rent which had come due since the assignment. A covenant to run with the land must touch and concern the land, and in the case of *Graber* v. *Duncan* (1881) 79 Ind. 565, it

was held that a covenant to pay taxes on the land did not touch and concern the land. A covenant to pay money would not usually seem to touch and concern the land. Rent, however, is an exception to this rule, but it is said there cannot be a rent out of an incorporeal hereditament; Coke on Littleton, 47a. This objection was raised in the case of *Bally* v. *Wells* (1769) 3 Wils. 25, where the action was against the assignee of the lessee of tithes. But the court after a consideration of *Dean & Chapter of Windsor* v. *Gover* (1672) 2 Saund. 302, 304; *Tippin* v. *Grover* (1661) Sir Th. Ray, 18; and other cases came to the conclusion that a covenant to pay rent for a lease of an incorporeal interest was binding on the assignee.

American courts generally hold that covenants may run with incorporeal as well as corporeal interests. *Lydick* v. *B. & O. R. Co.* (1880) 17 W. Va. 427, 439; *Morse* v. *Aldrich* (1837) 19 Pick. 449. In *Raby* v. *Reeves* (1893) 112 N. C. 688, it was held that the benefit of a covenant to pay a sum of money in compensation for the grant of an easement, would run with the servient tenement, and in *Van Rensselaer* v. *Read* (1863) 26 N. Y. 558, the court said at p. 577: "It is a settled proposition, therefore, that covenants may run with incorporeal as well as with corporeal heraditaments."

The burden of a covenant, however, will not be imposed on an assignee unless there be privity of estate between the plaintiff and the defendant. Privity of estate is generally held to designate the relation between the owner of the reversion and the owner of the term. In some jurisdictions, of which Indiana is one, privity of estate is held also to include the relation between the owner of the dominant tenement and the owner of the servient tenement; *Savage* v. *Mason* (1849) 3 Cush. 500; *Fitch* v. *Johnson* (1882) 104 Ill. 111, 121; *Conduitt* v. *Ross* (1885) 102 Ind. 166. But no case can be found in this country in which it has been held that the relation of privity existed when there was no dominant tenement. In *Milne* v. *Branch* (1816) 5 M. & S. 411, it was held that the Statute 32 Henry VIII. did not apply to the case of an incorporeal hereditament, because there was no reversion and no term; but in Ireland the opposite result was reached; *Egremont* v. *Keene* (1837) 2 Jones Ir. Eq. 307. Now, what is really meant by privity of estate is that both parties have an interest in the same piece of land. Thus a tenant for years and his landlord have interests in the same land. In like manner the owner of an easement or a profit and the owner of the servient estate have interests in the same land. It would seem to be immaterial, therefore, whether or not there be any dominant estate, and for that reason the decision in the principal case follows necessarily from the earlier case of *Conduitt* v. *Ross*, *supra*.

All this, however, is assuming, as the court did, that the right here granted was a profit and not a mere license. A simpler solution and one probably more in accordance with the real intention of the parties would be to treat the instrument in question as a contract only and not in any way as a grant of a property right. *Wheelock* v. *Thayer* (1834) 16 Pick. 68